

FIRST REGULAR SESSION

HOUSE BILL NO. 510

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES TORPEY (Sponsor) AND WIELAND (Co-sponsor).

1450H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 347.039 and 347.153, RSMo, and to enact in lieu thereof three new sections relating to series limited liability companies.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 347.039 and 347.153, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 347.039, 347.153, and 347.186, to read as follows:

347.039. 1. The articles of organization shall set forth:

(1) The name of the limited liability company;

(2) The purpose or purposes for which the limited liability company is organized, which may be stated to be, or to include, the transaction of any or all lawful business for which a limited liability company may be organized under sections 347.010 to 347.187;

(3) The address, including street and number, if any, of the registered office and the name of the registered agent at such office;

(4) A statement as to whether management of the limited liability company is vested in managers or in members;

(5) The events by which the limited liability company is to dissolve or the number of years the limited liability company is to exist, which may be any number or perpetual; and

(6) The name and physical business or residence address of each organizer.

2. **The information provided by the limited liability company under subdivisions (1) through (6) of subsection 1 of this section shall also be provided for each separate series of the limited liability company authorized to operate under section 347.186.**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 **3.** The articles of organization may set forth any other provision, not inconsistent with
17 law or sections 347.010 to 347.187, which are in the operating agreement of the limited liability
18 company.

 347.153. **1.** Before transacting business in this state, a foreign limited liability company
2 shall register in a format prescribed by the secretary unless otherwise exempt under subdivision
3 (5) of subsection 5 of section 347.163. In order to register, a foreign limited liability company
4 shall pay the required filing fee and shall submit to the secretary an application for registration
5 as a foreign limited liability company signed on its behalf by a manager, member or other
6 authorized agent and setting forth:

7 (1) The name of the foreign limited liability company and, if different, the name under
8 which it proposes to register and transact business in this state;

9 (2) The jurisdiction in which it was formed and date of its formation;

10 (3) The purpose of the foreign limited liability company or the general character of the
11 business it proposes to transact in this state;

12 (4) The name and physical address of its registered agent and registered office in this
13 state, which office and agent shall be subject to the same rights and limitations as provided in
14 sections 347.030 and 347.033;

15 (5) A statement that the secretary is appointed the agent of the foreign limited liability
16 company for service of process if the limited liability company fails to maintain a registered
17 agent in this state or if the agent cannot be found or served with the exercise of reasonable
18 diligence;

19 (6) The address of the office required to be maintained in the jurisdiction of its
20 organization by the laws of that jurisdiction or, if not so required, of the principal office of the
21 foreign limited liability company;

22 (7) A certificate of existence or a document of similar import duly authenticated by the
23 secretary of state or other official having custody of the records in the state or country under
24 whose laws it is registered; and

25 (8) A current certificate of good standing/existence from the secretary of state's office
26 in the state of domicile, such document should be dated within sixty calendar days from filing.

27 **2. The information provided by the foreign limited liability company under**
28 **subdivisions (1) through (8) of subsection 1 of this section shall also be provided for each**
29 **separate series of the limited liability company authorized to operate under section 347.186.**

347.186. 1. An operating agreement may establish or provide for the establishment
2 **of a designated series of members, managers, or limited liability company interests having**
3 **separate rights, powers, or duties with respect to specified property or obligations of the**
4 **limited liability company or profits and losses associated with specified property or**

5 obligations. To the extent provided in the operating agreement, any such series may have
6 a separate business purpose or investment objective.

7 2. (1) Notwithstanding any other provisions of law to the contrary, the debts,
8 liabilities, and obligations incurred, contracted for, or otherwise existing with respect to
9 a particular series shall be enforceable against the assets of such series only, and not
10 against the assets of the limited liability company generally or any other series thereof.
11 Such particular series shall be deemed to have possession, custody, and control only of the
12 books, records, information, and documentation related to such series and not of the books,
13 records, information, and documentation related to the limited liability company as a
14 whole or any other series thereof if all of the following apply:

15 (a) The operating agreement creates one or more series;

16 (b) Separate and distinct records are maintained for or on behalf of any such series;

17 (c) The assets associated with any such series, whether held directly or indirectly,
18 including through a nominee or otherwise, are accounted for separately from the other
19 assets of the limited liability company or of any other series;

20 (d) The operating agreement provides for the limitations on liabilities of a series
21 described in this subdivision;

22 (e) Notice of the limitation on liabilities of a series described in this subdivision is
23 included in the limited liability company's articles of organization; and

24 (f) The limited liability company has filed articles of organization that separately
25 identify each series which is to have limited liability under this section.

26 (2) With respect to a particular series, unless otherwise provided in the operating
27 agreement, none of the debts, liabilities, obligations, and expenses incurred, contracted for
28 or otherwise existing with respect to a limited liability company generally, or any other
29 series thereof, shall be enforceable against the assets of such series, subject to the
30 provisions of subdivision (1) of this subsection.

31 (3) Compliance with subparagraphs (e) and (f) of paragraph (1) of subdivision 1 of
32 this subsection shall constitute notice of such limitation of liability of a series.

33 (4) A series with limited liability shall be treated as a separate entity to the extent
34 set forth in the articles of organization. Each series with limited liability may, in its own
35 name, contract, hold title to assets, grant security interests, sue and be sued, and otherwise
36 conduct business and exercise the powers of a limited liability company under this chapter.
37 The limited liability company and any of its series may elect to consolidate its operations
38 as a single taxpayer to the extent permitted under applicable law, elect to work
39 cooperatively, elect to contract jointly, or elect to be treated as a single business for the
40 purposes of qualification or authorization to do business in this or any other state. Such

elections shall not affect the limitation of liability set forth in this section except to the extent that the series have specifically accepted joint liability by contract.

3. Except in the case of a foreign limited liability company that has adopted a name that is not the name under which it is registered in its jurisdiction of organization, as permitted under sections 347.153 and 347.157, the name of the series with limited liability is required to contain the entire name of the limited liability company and be distinguishable from the names of the other series set forth in the articles of organization. In the case of a foreign limited liability company that has adopted a name that is not the name under which it is registered in its jurisdiction of organization, as permitted under sections 347.153 and 347.157, the name of the series with limited liability must contain the entire name under which the foreign limited liability company has been admitted to transact business in this state.

4. (1) (a) Upon filing of articles of organization setting forth the name of each series with limited liability, in compliance with section 347.037 or amendments under section 347.041, the series' existence shall begin.

(b) Each copy of the articles of organization stamped "Filed" and marked with the filing date shall be conclusive evidence that all required conditions have been met and that the series has been or shall be legally organized and formed under this section and is notice for all purposes of all other facts required to be set forth therein.

(c) The name of a series with limited liability under this section may be changed by filing articles of amendment with the secretary of state pursuant to section 347.041, identifying the series whose name is being changed and the new name of such series. If not the same as the limited liability company, the names of the members of a member-managed series or of the managers of a manager-managed series may be changed by an amendment to the articles of organization with the secretary of state.

(d) A series with limited liability under this section may be dissolved by filing with the secretary of state articles of amendment pursuant to section 347.041 identifying the series being dissolved or by the dissolution of the limited liability company as provided in section 347.045. Except to the extent otherwise provided in the operating agreement, a series may be dissolved and its affairs wound up without causing the dissolution of the limited liability company. The dissolution of a series established in accordance with subsection 2 of this section shall not affect the limitation on liabilities of such series provided by subsection 2 of this section. A series is terminated and its affairs shall be wound up upon the dissolution of the limited liability company under section 347.045.

(e) Articles of organization, amendment, or termination described under this subdivision may be executed by the limited liability company or any manager, person, or entity designated in the operating agreement for the limited liability company.

(2) If different from the limited liability company, the articles of organization shall list the names of the members for each series if the series is member-managed or the names of the managers if the series is manager-managed.

(3) A series of a limited liability company shall be deemed to be in good standing as long as the limited liability company is in good standing.

(4) The registered agent and registered office for the limited liability company appointed under section 347.033 shall serve as the agent and office for service of process for each series in this state.

5. (1) An operating agreement may provide for classes or groups of members or managers associated with a series having such relative rights, powers, and duties as an operating agreement may provide and may make provision for the future creation of additional classes or groups of members or managers associated with the series having such relative rights, powers, and duties as may from time to time be established, including rights, powers, and duties senior and subordinate to or different from existing classes and groups of members or managers associated with the series.

(2) A series may be managed either by the member or members associated with the series or by the manager or managers chosen by the members of such series, as provided in the operating agreement. Unless otherwise provided in an operating agreement, the management of a series shall be vested in the members associated with such series.

(3) An operating agreement may grant to all or certain identified members or managers, or to a specified class or group of the members or managers associated with a series, the right to vote separately or with all or any class or group of the members or managers associated with the series, on any matter. An operating agreement may provide that any member or class or group of members associated with a series shall have no voting rights or ability to otherwise participate in the management or governance of such series, but any such member or class or group of members are owners of the series.

(4) Except as modified in this section, the provisions of this chapter which are generally applicable to limited liability companies and their managers, members, and transferees shall be applicable to each particular series with respect to the operation of such series.

(5) Except as otherwise provided in an operating agreement, any event specified in this chapter or in an operating agreement that causes a manager to cease to be a manager

with respect to a series shall not, in itself, cause such manager to cease to be a manager of the limited liability company or with respect to any other series thereof.

(6) Except as otherwise provided in an operating agreement, any event specified in this chapter or in an operating agreement that causes a member to cease to be associated with a series shall not, in itself, cause such member to cease to be associated with any other series, terminate the continued membership of a member in the limited liability company, or cause the termination of the series, regardless of whether such member was the last remaining member associated with such series.

(7) An operating agreement may impose restrictions, duties, and obligations on members of the limited liability company or any series thereof as a matter of internal governance, including, without limitation, those with regard to:

- (i) Choice of law, forum selection, or consent to personal jurisdiction;
- (ii) Capital contributions;
- (iii) Restrictions on, or terms and conditions of, the transfer of membership interests;
- (iv) Restrictive covenants, including non-competition, non-solicitation, and confidentiality provisions;
- (v) Fiduciary duties; and
- (vi) Restrictions, duties, or obligations to or for the benefit of the limited liability company, other series thereof, or their affiliates.

6. (1) If a limited liability company with the ability to establish series does not register to do business in a foreign jurisdiction for itself and its series, a series of a limited liability company may itself register to do business as a limited liability company in the foreign jurisdiction in accordance with the laws of the foreign jurisdiction.

(2) If a foreign limited liability company, as permitted in the jurisdiction of its organization, has established a series having separate rights, powers, or duties and has limited the liabilities of such series so that the debts, liabilities, and obligations incurred, contracted for, or otherwise existing with respect to a particular series are enforceable against the assets of such series only, and not against the assets of the limited liability company generally or any other series thereof, or so that the debts, liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with respect to the limited liability company generally or any other series thereof are not enforceable against the assets of such series, then the limited liability company, on behalf of itself or any of its series, or any of its series on its own behalf may register to do business in this state in accordance with this chapter. The limitation of liability shall also be stated on the application for registration. As required under section 347.153, the registration

146 application filed shall identify each series being registered to do business in the state by the
147 limited liability company. Unless otherwise provided in the operating agreement, the
148 debts, liabilities, and obligations incurred, contracted for, or otherwise existing with
149 respect to a particular series of such a foreign limited liability company shall be
150 enforceable against the assets of such series only and not against the assets of the foreign
151 limited liability company generally or any other series thereof, and none of the debts,
152 liabilities, obligations, and expenses incurred, contracted for, or otherwise existing with
153 respect to such a foreign limited liability company generally or any other series thereof
154 shall be enforceable against the assets of such series.

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